

## CHAPTER 815

## COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

[P]

Deferral of costs in civil and criminal proceedings; see chapter 610

815.1	Costs payable by state in special cases. Repealed by 2005 Acts, ch 107, §13, 14.	815.8	Sheriffs' fees.
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**815.1 Costs payable by state in special cases.** Repealed by 2005 Acts, ch 107, § 13, 14. See § 815.10 and 815.11.

**815.2 Grand jury clerks and other officers.**

The clerk of the grand jury and any assistant clerks and bailiffs of the grand jury appointed by the court, shall receive such compensation as may be set by the court with the approval of the county board of supervisors for time actually and necessarily employed in the performance of the duties prescribed in rule of criminal procedure 2.3.

[C97, §5256; S13, §5256; C24, 27, 31, 35, 39, §13696, 13699; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §770.19, 770.22; C79, 81, §815.2]

**815.3 Witnesses called to county attorney investigations.**

Witnesses subpoenaed by the county attorney pursuant to rule of criminal procedure 2.5 shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney.

[C79, 81, §815.3]

**815.4 Special witnesses for indigents.**

Witnesses secured for indigent defendants under rule of criminal procedure 2.20 must file a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant.

[C79, 81, §815.4]

93 Acts, ch 175, §21; 99 Acts, ch 135, §24

**815.5 Expert witnesses for state and defense.**

Notwithstanding the provisions of section 622.72, reasonable compensation as determined by the court shall be awarded expert witnesses, expert witnesses for an indigent person referred to in section 815.4, or called by the state in criminal cases.

[C79, 81, §815.5]

93 Acts, ch 175, §22; 99 Acts, ch 135, §25

[P] See R.Cr.P. 2.20(4)

**815.6 Fees to material witnesses.**

Persons confined as material witnesses shall, for each day of confinement, receive such fees as are set by the district court.

[C79, 81, §815.6]

**815.7 Fees to attorneys.**

1. An attorney who has not entered into a contract authorized under section 13B.4 and

who is appointed by the court to represent any person pursuant to section 814.11 or 815.10 shall be entitled to reasonable compensation and expenses.

2. For appointments made on or after July 1, 1999, through June 30, 2006, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class “A” felonies, fifty-five dollars per hour for class “B” felonies, and fifty dollars per hour for all other cases.

3. For appointments made on or after July 1, 2006, through June 30, 2007, the reasonable compensation shall be calculated on the basis of sixty-five dollars per hour for class “A” felonies, sixty dollars per hour for all other felonies, sixty dollars per hour for misdemeanors, and fifty-five dollars per hour for all other cases.

4. For appointments made on or after July 1, 2007, the reasonable compensation shall be calculated on the basis of seventy dollars per hour for class “A” felonies, sixty-five dollars per hour for class “B” felonies, and sixty dollars per hour for all other cases.

5. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class “A” felony cases, two may be authorized.

[C51, §2561 – 2563; R60, §1578, 4168 – 4170; C73, §3829 – 3831; C97, §5314; C24, 27, 31, 35, 39, §13774; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §775.5; C79, 81, §815.7]

94 Acts, ch 1187, §23; 96 Acts, ch 1193, §8; 97 Acts, ch 126, §50; 99 Acts, ch 135, §26; 2000 Acts, ch 1115, §5; 2004 Acts, ch 1084, §12; 2006 Acts, ch 1166, §9; 2007 Acts, ch 213, §25

[SP] Compensation rates for attorneys appointed prior to July 1, 1999; determination of appointment date and compensation rate in juvenile cases; 2000 Acts, ch 1115, §10

### **815.8 Sheriffs’ fees.**

For delivering defendants under the change of venue provisions of rule of criminal procedure 2.11 or transferring arrested persons under section 804.24, sheriffs are entitled to the same fees as are allowed for the conveyance of persons to institutions under section 331.655.

[C51, §3277; R60, §4741; C73, §4382; C97, §5355; C24, 27, 31, 35, 39, §13825; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §778.16; C79, 81, §815.8]

85 Acts, ch 21, §48

### **815.9 Indigency determined — penalty.**

1. For purposes of this chapter, chapters 13B, 229A, 232, 665, 812, 814, and 822, and section 811.1A, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

a. A person is entitled to an attorney appointed by the court to represent the person if the person has an income level at or below one hundred twenty-five percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending case. In making the determination of a person’s ability to pay for the cost of an attorney, the court shall consider not only the person’s income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

b. A person with an income level greater than one hundred twenty-five percent, but at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the court makes a written finding that not appointing counsel on the pending case would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person’s income, but also the availability of any assets subject to execution, including but not limited

to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

c. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the person is charged with a felony and the court makes a written finding that not appointing counsel would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

2. A determination of whether a person is entitled to an appointed attorney shall be made on the basis of an affidavit of financial status submitted at the time of the person's initial appearance or at such later time as a request for court appointment of counsel is made. The state public defender shall adopt rules prescribing the form and content of the affidavit of financial status. The affidavit of financial status shall be signed under penalty of perjury and shall contain sufficient information to allow the determination to be made of whether the person is entitled to an appointed attorney under this section. If the person is granted an appointed attorney, the affidavit of financial status shall be filed and permanently retained in the person's court file.

3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person. "Legal assistance" as used in this section shall include not only an appointed attorney, but also transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

4. If the case is a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than the date of sentencing, or if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal.

5. If the case is other than a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than ten days from the date of any court ruling or trial held in the case, or if the case is dismissed, within ten days of the dismissal.

6. An appointed attorney shall submit a report pertaining to the costs and fees for legal assistance to the court at the times specified in subsections 4 and 5. If the appointed attorney is a public defender, the report shall specify the total hours of service plus other expenses. If the appointed attorney is a private attorney, the total amount of legal assistance shall be the total amount of the fees claimed by the appointed attorney together with other expenses.

7. If all costs and fees incurred for legal assistance are not paid at the times specified in subsections 4 and 5, the court shall order payment of the costs and fees in reasonable installments.

8. If a person is granted an appointed attorney or has received legal assistance in accordance with this section and the person is employed, the person shall execute an assignment of wages. An order for assignment of income, in a reasonable amount to be determined by the court, shall be entered by the court. The state public defender shall prescribe forms for use in wage assignments and court orders entered under this subsection.

9. If any costs and fees are not paid at the times specified under subsections 4 and 5, a judgment shall be entered against the person for any unpaid amounts.

83 Acts, ch 186, §10137, 10201; 93 Acts, ch 175, §23, 24; 96 Acts, ch 1193, §9 – 11; 99 Acts, ch 135, §27; 2000 Acts, ch 1115, §6; 2002 Acts, ch 1067, §15; 2004 Acts, ch 1084, §13

**815.9A** Repealed by 99 Acts, ch 135, § 31.

#### **815.10 Appointment of counsel by court.**

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to

section 13B.4 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation if applicable under section 908.2A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation under chapter 908, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class “A” felony cases the court may appoint two attorneys.

2. If the state public defender or the state public defender’s designee is unable to represent an indigent person, the court shall appoint an attorney who has a contract with the state public defender to represent the person.

3. If the court determines that no contract attorney is available to represent the person, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.

4. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

5. An attorney who has been retained or has agreed to represent a person and subsequently applies to the court for appointment to represent that person because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal that the person’s conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage.

83 Acts, ch 186, §10138, 10201; 91 Acts, ch 268, §436, 439; 94 Acts, ch 1187, §24; 96 Acts, ch 1040, §5; 99 Acts, ch 135, §28; 2000 Acts, ch 1115, §7; 2002 Acts, ch 1067, §16; 2004 Acts, ch 1017, §4; 2004 Acts, ch 1084, §14; 2005 Acts, ch 19, §120; 2005 Acts, ch 107, §8, 14

#### **815.10A Claims for compensation and expense reimbursement.**

1. An attorney other than a public defender who has been appointed by the court under this chapter must submit a claim to the state public defender for compensation and reimbursement of expenses incurred in the representation of an indigent person.

2. Claims for compensation and reimbursement submitted by an attorney appointed after June 30, 2004, are not considered timely unless the claim is submitted to the state public defender within forty-five days of a withdrawal order, sentencing, acquittal, or dismissal, whichever is earliest, in a criminal case or the withdrawal order, final ruling, or dismissal, whichever is earliest, in any other type of case.

3. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations if good cause for exceeding the fee limitations is shown. An attorney may obtain court approval after exceeding the fee limitations if good cause excusing the attorney’s failure to seek approval prior to exceeding the fee limitations is shown. However, failure to file an application to exceed a fee limitation prior to exceeding the fee limitation does not constitute good cause. The order approving an application to exceed the fee limitations shall be effective from the date of filing the application unless the court order provides an alternative effective date. The application and the court order approving

the application to exceed fee limitations and any other order affecting the amount of compensation or reimbursement shall be submitted with any claim for compensation.

4. If the information is not submitted as required under this section and under the rules of the state public defender, the claim for compensation may be denied until the information is provided. Upon receipt of the required information, the state public defender may approve reasonable and necessary compensation, as provided for in the administrative rules and the law.

2002 Acts, ch 1067, §17; 2004 Acts, ch 1040, §5; 2008 Acts, ch 1061, §7

#### **815.11 Appropriations for indigent defense — fund created.**

Costs incurred for legal representation by a court-appointed attorney under chapter 229A, 665, 822, or 908, or section 232.141, subsection 3, paragraph “d”, or section 598.23A, 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10 on behalf of an indigent shall be paid from moneys appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals and deposited in an account to be known as the indigent defense fund. Costs incurred representing an indigent defendant in a contempt action, or representing an indigent juvenile in a juvenile court proceeding, are also payable from the fund. However, costs incurred in any administrative proceeding or in any other proceeding under this chapter or chapter 598, 600, 600A, 633, 633A, 814, or 915 or other provisions of the Code or administrative rules are not payable from the fund.

83 Acts, ch 186, §10139, 10201; 85 Acts, ch 195, §65; 90 Acts, ch 1233, §45; 94 Acts, ch 1187, §25; 98 Acts, ch 1171, §18; 99 Acts, ch 135, §29; 2000 Acts, ch 1115, §8; 2002 Acts, ch 1067, §18; 2003 Acts, ch 51, §5; 2004 Acts, ch 1040, §6; 2005 Acts, ch 107, §9, 14; 2006 Acts, ch 1030, §82; 2006 Acts, ch 1041, §8; 2007 Acts, ch 22, §106; 2008 Acts, ch 1061, §8

#### **815.12 Trial jury expenses.**

The clerk of the district court shall pay fees and mileage due petit jurors, and the costs of food, lodging, and transportation when provided for petit jurors.

83 Acts, ch 186, §10140, 10201

#### **815.13 Payment of prosecution costs.**

The county or city which has the duty to prosecute a criminal action shall pay the costs of depositions taken on behalf of the prosecution, the costs of transcripts requested by the prosecution, and in criminal actions prosecuted by the county or city under county or city ordinance the fees that are payable to the clerk of the district court for services rendered and the court costs taxed in connection with the trial of the action or appeals from the judgment. The county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance. These fees and costs are recoverable by the county or city from the defendant unless the defendant is found not guilty or the action is dismissed, in which case the state shall pay the witness fees and mileage in cases prosecuted under state law.

83 Acts, ch 186, §10141, 10201; 84 Acts, ch 1178, §12; 84 Acts, ch 1301, §16; 85 Acts, ch 197, §43

#### **815.14 Fee for public defender.**

When determining the amount of restitution for each case under section 910.3, the expense of the public defender shall be calculated at the same hourly rate of compensation specified under section 815.7. However, the expense of the public defender shall not exceed the fee limitations established in section 13B.4.

2002 Acts, ch 1067, §19